No. 83-1120

IN THE

SUPERIOR COURT OF PENNSYLVANIA

October Term, 1983

JOHN J. SCARSELLETTI,
Petitioner

v.

AETNA CASUALTY & SURETY COMPANY,
Respondent

SUPPLEMENTAL APPENDIX

John J. Scarselletti
44 So. Tallahassee Avenue
Atlantic City, N.J. 08401
(609) 347-1014
Attorney for Petitioner
(Pro Se)

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

APPENDIX

IN THE
SUPERIOR COURT OF PENNSYLVANIA

No.271 & 272 Philadelphia, 1981

JOHN J. SCARSELLETTI, Appellant,

vs.

AETNA CASUALTY & SURETY COMPANY,
Appellee,

APPEAL FROM THE ORDER OF JANUARY 5 and 8, 1981
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
COUNTY, TRIAL DIVISION, LAW,
No. 2696 September Term, 1965

BEFORE: WICKERSHAM, CIRILLO and LIPEZ, JJ.

PER CURIAM:

Order affirmed. July 30, 1982

APPENDIX

IN THE
SUPERIOR COURT OF PENNSYLVANIA

No. 271 & 272 Philadelphia, 1981

JOHN J. SCARSELLETTI,
Appellant,

vs.

AETNA CASUALTY & SURETY COMPANY,
Appellee,

APPEAL FROM THE ORDER OF JANUARY5 and 8, 1981
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
COUNTY, TRIAL DIVISION, LAW,
No. 2696 September Term, 1965

BEFORE: WICKERSHAM, CIRILLO and LIPEZ, JJ.

MEMORANDUM OPINION:

This is an appeal from an Order of the Court of Common Pleas of Philadelphia County entered January 8, 1981. The appellant, John J. Scarselletti, seeks to have this Order vacated and a new trial granted.

On October 31, 1964 a fire occurred at the home of the appellant on 7026 McCallum Street in Philadelphia, thereby causing damage. The property was insured against fire and other casualty loss and damage by the appellee, the Aetna Casualty and Surety Company. The Aetna policy provided the following coverages:

Dwelling	$20,000
Appurtenant private structure	2,000
Unscheduled personal property	8,000
Additional living expense	2,000
Total Coverage	$32,000

Based on an inspection of the premises made by one of its' adjustors, Aetna offered to settle with the appellant for $5,500.00. However, the appellant asserted that he was entitled to the maximum amount afforded by the policy.

On October 27, 1965 the appellant initiated an action in assumsit against Aetna for the total amount of the insurance policy plus interest. On August 16, 1967 the appellant initiated a second

suit against Aetna for $100,000 alleging fraud and bad faith on the part of Aetna in settling this claim. The appellant averred that Aetna tried to obtain a quick settlement by concealing the real and extensive damage caused by the fire. On October 2, 1967, by stipulation of counsel and approval of the court, the two cases were consolidated for pleading and trial. Over the next several years there were various delays in this case for the filing of motions and petitions as well as the granting of continuances. Finally, on January 5, 1981 the case was brought to trial before the Honorable Lawrence Prattis and a jury. On January 8, 1981 the jury rendered a verdict for the appellant and awarded damages in the following amounts:

Dwelling	$5500.00
Personal Property	2400.00
Additional Living Expense	252.67
Total Damages	$8152.67

On February 5, 1981, after the Order has been docketed, the appellant appealed from the favor-

able verdict. Subsequently, on July 28, 1981, Judge Prattis issued a Memorandum and Order denying a Motion for a New Trial.[1] This appeal now follows:

On appeal, the appellant seeks a new trial alleging: (1) the trial judge's actions were arbitrary and unreasonable, thereby denying him Due Process of Law; (2) the award of the jury was inadequate; and (3) both cases were not heard.

In his brief the appellant lists fifteen instances in which the trial court's attitudes and actions allegedly prejudiced him, thereby denying the appellant his constitutional rights. After thoroughly reviewing the record in this matter, we find that the lower court's actions were proper and that the appellant's constitutional rights were not violated. This argument by the appellant is, therefore, without merit.

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[1] No written post-trial motions are included in the record or noted on the lower court's docket. Under Pa. R.C.P. No. 2271.1:

> All post-trial motions after trial by jury, indlucing a motion for a new trial, judgment non obstante veredicto, judgment upon the whole record after disagreement of a jury, removal of a nonsuit and in arrest of judgment, shall be filed within (10) days after nonsuit or verdict or disagreement of the jury.

Therefore, it would appear that the appellant has failed to preserve any issues for appeal. Moreover, Pa. R.A. P. no. 1701 (a) provides:

> Except as otherwise prescribed by these rules, after an appeal is taken or a petition for allowance of an appeal is filed in a matter or review of a quasijudicial order is sought, the lower court or other government unit may no longer proceed further in the matter.

After the appellant filed his notice of appeal on February 5, 1981, the lower court was without authority to rule on a motion for a new trial. However, due to the protracted proceedings which have plagued this matter from the outset, we have decided to address the merits of the issues presented by the appellant.

A new trial should be granted only when the jury's verdict is so contrary to the evidence as to shock the trial court's sense of justice and a new trial is necessary to rectify the situation. Austin v. Ridge, 435 Pa. 1, 255 A.2d 123 (1969); see also, Tinicum Real Estate Holding Corporation v. Commonwealth, Department of Transportation, 480

Pa. 220, 389 A.2d 1034 (1978); Bertab, Inc. vs. Fox, 275 Pa. Super. 76, 418 A.2d 618 (1980).

In this case, Aetna offered to settle this claim in 1964 for $5500.00. In 1981, following a trial during which testimony and seven photographs of the premises were presented, the jury awarded the appellant $8152.67 in damages. Even though the appellant may be disappointed with the amount awarded by the jury, it was not so contrary to the evidence as to vitiate justice. Accordingly, we reject this argument of the appellant.

Finally, despite the appellant's allegations to the contrary, both cases were indeed heard by the trial court. The cases had been consolidated for trial in 1967 by stipulation of counsel and approval of the court. Since the amount of damages found by the jury was close to the amount for which Aetna had earlier offered to settle, it is clear that the appellant had not proven fraud or bad faith on the part of Aetna.

For all of the above reasons, we dismiss the appellant's claims and affirm the Order of the Court below.

Order affirmed.

APPENDIX

JOHN J. SCARSELLETTI

vs.

AETNA CASUALTY & SURETY COMPANY

COURT OF COMMON PLEAS No. 4
PHILADELPHIA COUNTY
SEPTEMBER TERM, 1965
No. 2696

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
JUNE TERM, 1967
No. 5528

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's motion for new trial from a favorable jury verdict. The instant litigation arises from the following factual background.

On or about October 31, 1964, plaintiff's property was damaged by fire. The property was insured by the defendant, Aetna Casualty & Surety Company against damage caused by fires. Defendant admits that a fire caused damage to the plaintiff's property but contests the amount claimed for damages by the plaintiff.

The law mandates that a new trial should be granted when the jury's verdict is so contrary to the evidence as to shock the trial court's sense of justice and a new trial is necessary to rectify the situation. Austin v. Ridge, 435 Pa. 1, 255 A.2d 123 (1969); Sindler v. Goldman, 256 Pa. Super 417, 389 A.2d 1192 (1978). The decision to grant a new trial is within the court's discretion. The trial court's decision to grant or deny a motion for new trial will not be reserved on appeal, absent demonstrating the judge acted capriciously or palpably abused his discretion. Junk v. East End Fire dept., 262 Pa. Super 473, 396 A.2d 1269 (1978). Moreover, conflicts in evidence are to be resolved by the fact-finder. The amount of damages required to fully compensate a plaintiff is a question for the jury to assess from the evidence. If a verdict bears a reasonable resemblance to the proven damages, it is not the function of the court to substitute its judgment for that of the jury even if the verdict

is low. Wolfgang v. Wiest, 47 Northumb. L.J. 164 (1975). A trial judge will be held to abuse his discretion when he grants a new trial merely because he would have arrived at a different conclusion on the facts in the case than reached by the jury. Bertab Inc. vs. Fox, ___ Pa. Super 418 A.2d 618 (1980).

Accordingly, plaintiff's motion for new trial is hereby denied.

PRATTIS
J.

July 27, 1981

O R D E R

AND NOW, to wit, this 28th day of July, 1981, it is hereby ORDERED and DECREED that Plaintiff's Motion for New Trial is denied.

BY THE COURT

PRATTIS
J.

Received — Civil
July 29, 1981